



N 6570-01P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1625

3046-AA72

Apprenticeship Programs; Corrections

AGENCY: Equal Employment Opportunity Commission

ACTION: Correcting Amendments

SUMMARY: The EEOC is correcting a cross-reference in its regulation concerning the procedures for requesting an exemption for apprenticeship programs from the Age Discrimination in Employment Act (ADEA) pursuant to Section 9 of the Act.

DATES: Effective: [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Carol R. Miaskoff, Assistant Legal Counsel, at (202) 663-4645 (voice) or Raymond L. Peeler, Senior Attorney-Advisor, at (202) 663-4537 (voice) or (202) 663-7026 (TDD). Requests for this notice in an alternative format should be made to the Office of Communications and Legislative

Affairs at (202) 663-4191 (voice) or (202) 663-4494 (TTY), or the Publications Information Center at 1-800-669-3362 (toll free).

SUPPLEMENTAL INFORMATION:

Background

In 1996, the Commission issued a regulation finding that apprenticeship programs were covered by the Age Discrimination in Employment Act of 1967 (ADEA),¹ with limited exceptions. One of those exceptions occurs when the EEOC exercises its authority under section 9 of the ADEA to establish reasonable exemptions from the Act's prohibitions on employment discrimination against individuals aged 40 or above.² By regulation, the EEOC has approved one exemption for apprenticeship programs created under the Manpower Development and Training Act of 1962 or the Economic Opportunity Act of 1964,³ and has outlined procedures for stakeholders to request other exemptions from EEOC.⁴ The apprenticeship program regulation cross-referenced these agency procedures on how to request an ADEA Section 9 exemption, citing 29 CFR 1627.15.

Need for Correction

When the EEOC most recently exercised its exemption authority on an unrelated matter, in 2007, it also moved the procedures for requesting an exemption to a new section – 29 CFR 1625.30. However, the Commission neglected to update the cross-

¹ 29 U.S.C. 621 et seq.

² 29 U.S.C. 628.

³ 29 CFR 1625.31(a).

⁴ 29 CFR 1625.30.

reference in the apprenticeship program regulation to reflect this change. The regulation originally cross-referenced in the apprenticeship program regulation, 29 CFR 1627.15, no longer exists. Therefore, the EEOC replaces the now incorrect reference in 29 CFR 1625.21 with language reflecting the new citation for the agency's procedures for requesting an administrative exemption from ADEA prohibitions – 29 CFR 1625.30.

Retrospective Regulatory Review

Although the EEOC's rulemakings on apprenticeship programs and administrative exemptions are not currently a priority for regulatory review, the Commission is taking this action, consistent with the EEOC Plan for Retrospective Analysis of Existing Rules,⁵ based on stakeholder input and efforts to enhance clarity in the EEOC's regulations.⁶

Regulatory Procedures

The Commission finds that public notice-and-comment on this rule is unnecessary, because the revision makes no substantive change; it merely corrects an internal cross-referencing error. The rule is therefore exempt from the notice-and-comment requirements of 5 U.S.C. 553(b) under 5 U.S.C. 553(b)(B). This technical correction also is not "significant" for purposes of Executive Order 12866, as reaffirmed by E.O. 13563, and therefore is not subject to review by Office of Management and Budget.

⁵ A copy of the EEOC's Final Plan for Retrospective Analysis of Existing Regulations is available at http://www.eeoc.gov/laws/regulations/retro_review_plan_final.cfm (last visited Oct. 5, 2012).

⁶ This error was brought to the EEOC's attention by attorneys inquiring about the procedures for seeking an EEOC exemption from ADEA prohibitions for an apprenticeship program that would build workplace skills for disadvantaged youth but not be available to older people covered by the ADEA.

Regulatory Analysis

Since this technical correction contains no substantive changes to the law, EEOC certifies that it contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35), it requires no formal cost-benefit analysis pursuant to E.O. 12866, it creates no significant impact on small business entities subject to review under the Regulatory Flexibility Act, and it imposes no new economic burden requiring further analysis under the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This correction is defined as a rule under the Congressional Review Act, but not as a major rule. As a result, it was provided to Congress and the General Accountability Office pursuant to the requirements of 5 U.S.C. 801 as interpreted by Office of Management and Budget Memorandum M-99-13.

List of Subjects in 29 CFR Part 1625

Advertising, Age, Employee benefit plans, Equal employment opportunity, and Retirement.

For the reasons stated in the preamble, the Equal Employment Opportunity Commission amends 29 CFR Part 1625 as follows:

PART 1625 –AGE DISCRIMINATION IN EMPLOYMENT ACT

1. The authority citation for 29 CFR Part 1625 continues to read as follows:

Authority: 29 U.S.C. 621-634; 5 U.S.C. 301; Pub. L. 99-502, 100 Stat. 3342; Secretary's Order No. 10-68; Secretary's Order No. 11-68; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807; Executive Order 12067, 43 FR 28967.

2. Revise § 1625.21 to read as follows:

§ 1625.21 Apprenticeship programs.

All apprenticeship programs, including those apprenticeship programs created or maintained by joint labor-management organizations, are subject to the prohibitions of sec. 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C.

623. Age limitations in apprenticeship programs are valid only if excepted under sec. 4(f)(1) of the Act, 29 U.S.C. 623(f)(1), or exempted by the Commission under sec. 9 of the Act, 29 U.S.C. 628, in accordance with the procedures set forth in 29 CFR 1625.30.

For the Commission

Jenny R. Yang

Chair

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